



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 29, 1997

The Honorable Jerry Patterson
Chair, Veteran Affairs & Military
Installations
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 97-098

Re: Whether the American Legion, Department
of Texas, is a charitable organization within the
Charitable Immunity and Liability Act of 1987,
Civil Practice and Remedies Code chapter 84
(ID# 39554)

Dear Senator Patterson:

You request advice about the Charitable Immunity and Liability Act of 1987, codified as chapter 84 of the Civil Practice and Remedies Code. The Charitable Immunity and Liability Act of 1987 (the "act") generally grants a volunteer serving as an officer, director, or trustee of a charitable organization immunity from civil liability for acts or omissions resulting in death, damage, or injury done in the course and scope of his or her duties. Civ. Prac. & Rem. Code § 84.004(a); *see id.* § 84.004(c), .007 (exceptions). A similar immunity is granted to a person serving as a direct service volunteer of a charitable organization, if the volunteer was acting in good faith and in the course and scope of his or her duties. *Id.* § 84.004(b). The liability of employees and the charitable organization itself is limited to money damages in maximum amounts set out in the statute. *Id.* §§ 84.005, .006.¹ You specifically ask whether the American Legion, Department of Texas, is a "charitable organization" within the act.

The American Legion is a national veterans² organization, created by a special act of Congress. *See* 36 U.S.C. § 41.³ By that act, it was authorized to establish state and territorial

¹These limitations on liability are available only to an organization that carries liability insurance in amounts also set forth in the statute. *See* Civ. Prac. & Rem. Code § 84.007(g).

²Membership in the organization is limited to persons who have served in the naval or military service of the United States or any governments associated with the United States during periods of war defined by Congress, provided "[t]hat such person shall have an honorable discharge or separation from such service or continues to serve honorably after any of the aforesaid terminal dates." 36 U.S.C. § 45.

³The purpose of the national organization is:

To uphold and defend the Constitution of the United States of America; to promote peace and good will among the peoples of the United States and all the nations of the earth; to preserve the memories and incidents of the two World Wars and the other great hostilities

(continued...)

organizations, as well as local chapter or post organizations, and to adopt a constitution and by-laws to carry out its purposes. *Id.* § 44. Under the constitution adopted pursuant to this authority, the American Legion has chartered state departments and local posts.⁴ The American Legion, Department of Texas (the "legion"), is a corporation incorporated under the general laws of Texas, and chartered by the national organization in 1919.⁵ Similar to the national organization, the purpose of the legion, as stated in its constitution, is to:

[F]oster and to perpetuate a one hundred [percent] Americanism, to preserve the memories and incidents of our association in the Great Wars; to inculcate a sense of individual obligation to the community, state and nation; to combat the autocracy of both the classes and the masses; to make right the master of might; to promote peace and good will on earth; to safeguard and transmit to posterity the principles of justice, freedom and democracy; to consecrate and sanctify our comradeship by our devotion to mutual helpfulness; to maintain law and order, a representative form of government, and to uphold and defend the Constitution of the United States and of the State of Texas.

Constitution and By-laws of the American Legion, Department of Texas, Constitution, art. II. Membership in the legion is as prescribed for the national organization.⁶ *Id.* art. III, § 1.

Although we can delineate the possible basis for qualification, we cannot make a determination as to whether the legion is a charitable organization under the act. Such a decision generally and necessarily⁷ involves the investigation and resolution of fact questions, which cannot

³(...continued)

fought to uphold democracy; to cement the ties and comradeship born of service; and to consecrate the efforts of its members to mutual helpfulness and service to their country.

Id. § 43.

⁴*American Legion, William Frank Martin Post No. 185, Dep't of Tex. v. Big Spring Veterans, Inc.*, 73 S.W.2d 594, 595 (Tex. Civ. App.--Eastland 1934, writ dismiss'd).

⁵*Id.*

⁶See *supra* note 2.

⁷See, e.g., Civ. Prac. & Rem. Code § 84.003(B)(i) - (vi).

be undertaken in the opinion process.⁸ With this caveat, we proceed to review the definition of "charitable organization" in the act.

The definition of "charitable organization" is provided in section 84.003 of the act:

(1) 'Charitable organization' means:

(A) any organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code, if [enumeration of additional conditions that must be met];

(B) any bona fide *charitable*, religious, prevention of cruelty to children or animals, youth sports and youth recreational, or educational organization, excluding alumni associations and related on-campus organizations, or *other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in the community, and that:*

(i) is organized and operated *exclusively* for one or more of the above purposes;

(ii) does not engage in activities which in themselves are not in furtherance of the purpose or purposes;

(iii) does not directly or indirectly participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office;

(iv) dedicates its assets to achieving the stated purpose or purposes of the organization;

(v) does not allow any part of its net assets on dissolution of the organization to inure to the benefit of any group, shareholder, or individual; and

⁸See Attorney General Opinions DM-402 (1996) at 4-5 (whether particular resource conservation and development council exclusively serves charitable purpose or exclusively promotes social welfare is question of fact inappropriate to opinions process), JM-1257 (1990) at 4 (decision that particular entity is "charitable organization" within act ordinarily involves investigation and resolutions of fact questions, which cannot be undertaken in opinion process), JM-951 (1988) at 4 (cannot engage in fact finding in opinion process, thus cannot determine whether public television station may qualify as charitable organization under act).

(vi) normally receives more than one-third of its support in any year from private or public gifts, grants, contributions, or membership fees; or

(C) a homeowners association as defined by Section 528(c) of the Internal Revenue Code of 1986.

Civ. Prac. & Rem. Code § 84.003(1) (*emphasis added*) (*footnotes omitted*).

An entity may qualify as a charitable organization if it is an organization described in subsection (A), (B), or (C) of section 84.003(1).⁹ The legion does not qualify under either subsection (A) or (C). The legion is not a homeowner's association within subsection (C). Nor does it fit the definition of a charitable organization within subsection (A). Although the legion is exempt from federal income tax, it is not exempt under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, but section 501(c)(19),¹⁰ which describes the following entities as exempt organizations:

(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) organized [enumerating other requirements that must be met].

26 U.S.C. § 501(c)(19).

Consequently, the legion is a charitable organization for purposes of the act only if it satisfies section 84.003(1)(B), which describes organizations organized and operated for one or more stated purposes. An organization must fit within this description and comply with all the requirements set out in subsections (1)(B)(i) through (B)(vi) in order to constitute a "charitable organization" under this provision. Thus, the legion's purpose must be one of the purposes described in subsection (B).¹¹

⁹You do not indicate the provision under which the legion asserts its qualification or provide any information with respect to it.

¹⁰*See Taxation with Representation of Wash. v. Regan*, 676 F.2d 715, 721 (D.C. Cir. 1982) (describing veterans groups such as American Legion and Veterans of Foreign Wars as exempt under section 501(c)(19)) *rev'd on other grounds*, 461 U.S. 540 (1983); *United States v. Hawes*, 529 F.2d 472, 480 (5th Cir. 1976) (American Legion and Moose Club tax exempt organizations not under section 501(c)(3) but under sections 501(c)(19) and 501(c)(8) [fraternal beneficiary societies, orders or associations]).

¹¹Attorney General Opinion JM-1257 (1990) at 3; *see also* Attorney General Opinion DM-402 (1996) at 2 (organization's status as charitable under act depends largely upon purpose organization serves).

We find the legion's broad constitutional statement of purpose insufficient to inform us whether the organization is eligible as a charitable organization described in section 84.003(1)(B).¹² As stated above, the legion is not exempt from federal income taxes under Internal Revenue Code section 501(c)(3) or 501(c)(4) but under section 501(c)(19). We look to the federal regulation construing the section 501(c)(19) tax exemption to aid us in determining the legion's eligibility as a charitable organization under section 84.003(1)(B). Section 1.501(c)(19)-1 of the Code of Federal Regulations describes the purposes for which a war veterans' organization must be exclusively operated. Although the legion need not be operated for all of the listed purposes, this list is helpful since it describes all of the possible purposes for which the legion may operate:

- (1) promote social welfare of the community;
- (2) assist disabled and needy war veterans and members of the armed forces and their dependents;
- (3) provide entertainment, care, and assistance to hospitalized veterans or members of the armed forces;
- (4) carry on programs to perpetuate the memory of deceased veterans and members of the Armed Forces and comfort survivors;
- (5) conduct religious, charitable, scientific, literary, or educational programs;
- (6) sponsor or participate in patriotic activities;
- (7) provide insurance benefits to members or their dependents; and
- (8) to provide social and recreational activities for members.

26 C.F.R. § 1.501(c)(19)-1.

With the above list of purposes for which a veterans' organization may be operated under the federal tax regulations, we turn back to the special purpose charitable organizations described in section 84.003(1)(B). Based on the diverse purposes for which the legion may be operated, we do not believe the legion is a special purpose "religious, prevention of cruelty to children or animals, youth sports and youth recreational, or educational"¹³ organization" described in the first part of

¹²We have not been provided with the articles of incorporation or any statements as to the purposes of the legion.

¹³See 26 C.F.R. § 1.501(c)(3)-1 (defining and listing examples of educational organizations, e.g., primary or (continued...))

subsection (B). The remainder of this provision encompasses any “bona fide charitable” organization or “other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in [the] community.” Civ. Prac. & Rem. Code § 84.003(1)(B).

The act does not define “charitable purposes” or the “promotion of social welfare.” Section 2(2)(A) of the Charitable Raffle Enabling Act, V.T.C.S. article 179f, defines “charitable purposes” as

benefitting needy or deserving persons in this state, indefinite in number, by enhancing their opportunity for religious or educational advancement, relieving them from disease, suffering, or distress, contributing to their physical well-being, assisting them in establishing themselves in life as worthy and useful citizens, or increasing their comprehension of and devotion to the principles on which this nation was founded and enhancing their loyalty to their government.

Although the legislature’s definition of a term in one act does not necessarily mandate the term’s meaning in another act,¹⁴ this office has stated that based on a similar definition used by the courts in determining whether a trust has been established,¹⁵ the definition of the term “charitable purpose” in article 179f is helpful in defining the same term in the context of the act.¹⁶

This office has also opined with respect to the definition of “promotion of social welfare.” Attorney General Opinion JM-1257 considered whether a chamber of commerce is a charitable organization for the purposes of the act. Without delineating “the full range of activities that might be performed by organizations that are ‘organized and operated exclusively for the promotion of social welfare by . . . promoting the common good and general welfare of the people in a community,’” this office concluded in that opinion that an organization that exclusively promotes social welfare is one “that provides services to individuals who are in need of them.”¹⁷

¹³(...continued)

secondary school; college; professional or trade school; organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or similar programs; organization that offers correspondence courses; museums, zoos, planetariums, symphony, orchestra, and similar organizations).

¹⁴67 TEX. JUR. 3D *Statutes* § 106 (1989).

¹⁵Attorney General Opinion JM-1180 (1990) at 2-3 (and sources cited therein).

¹⁶Attorney General Opinion DM-402 (1996) at 3. This office concluded in Attorney General Opinion DM-402 that the purposes of a statutorily created resource conservation and development council may be consistent with purposes of a charitable organization under the act, but whether a particular resource conservation and development council is a charitable organization is a question of fact. *Id.* at 4-5.

¹⁷Attorney General Opinion JM-1257 (1990) at 6. This office noted in Attorney General Opinion JM-1257 (continued...)

Based on the foregoing definitions of charitable purpose and promotion of social welfare, we believe that some of the purposes set out in section 1.501(c)(19)-1 of the Code of Federal Regulations are charitable purposes within section 84.003(1)(B) because they benefit needy or deserving persons in the state. For example, assisting and caring for disabled, needy or hospitalized veterans; members of the armed forces; or their dependents is, in our opinion, a charitable purpose.

In addition to serving a charitable purpose or being organized and operated exclusively to promote social welfare, the legion, of course, must meet all the requirements in section 84.003(1)(B)(i) through (vi), *see* discussion *supra* pp. 3-4, to constitute a charitable organization under subsection (1)(B). Whether the legion actually and exclusively serves a charitable purpose, or is organized and operated exclusively to promote social welfare, and otherwise meets the requirements of subsections (B)(i) through (vi), are questions of fact that are inappropriate to the opinion process.¹⁸

¹⁷(...continued)

that ordinarily the decision whether a particular entity is a charitable organization under the act requires investigation and resolution of fact questions which this office cannot undertake. *Id.* at 4. However, in that opinion, this office believed it could rely upon numerous judicial and administrative determinations about the purpose of a chamber of commerce to decide whether it was a charitable organization, concluding that it was not. *Id.* at 5, 6-7.

¹⁸*See supra* note 8; *see also, e.g.*, Attorney General Opinions DM-383 (1996) at 2 (questions of fact are inappropriate for opinion process), DM-98 (1992) at 3 (questions of fact cannot be resolved in opinion process), H-56 (1973) at 3 (improper for attorney general to pass judgment on matter that would be question for jury determination), M-187 (1968) at 3 (attorney general cannot make factual findings), S-201 (1956) at 2 (whether post of Veterans of Foreign Wars is an "institution of purely public charity" within Tex. Const. art. VIII, § 2, is fact question).

S U M M A R Y

The American Legion, Department of Texas is a charitable organization within the Charitable Immunity and Liability Act of 1987, Civil Practice and Remedies Code chapter 84, *if* the legion's purposes are consistent with the purposes a "bona fide charitable" organization or an "organization organized and operated exclusively for the promotion of social welfare" must serve under, *and* the legion otherwise meets the requirements of Civil Practice and Remedies Code section 84.003(1)(B). Whether the legion actually and exclusively serves a charitable purpose, or is organized and operated exclusively to promote social welfare, and otherwise meets the requirements of subsections (B)(i) through (vi), are questions of fact that are inappropriate to the opinion process.

Yours very truly,

A handwritten signature in cursive script that reads "Sheela Rai".

Sheela Rai
Assistant Attorney General
Opinion Committee